

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, December 10, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Ray Dwyer
Tom Day
Walter Schmidt

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment Members
Mary Finet, Waukesha County staff
Dawn and Dan Engen, BA08:071, owners
Dennis Punches, BA08:072, owner
Matt Heaton, BA08:072, architect
Bill Groskopf, BA08:072, builder
Carol and Bob Buth, BA08:072, neighbor
Penny Church, BA08:072, neighbor
Mark B. Schel, BA08:072, neighbor
Bob Gartzko, BA08:072, neighbor
Dorothy Gartzke, BA08:072, neighbor
Dan Glatin, BA08:072, neighbor
Dan & Libby Cleary, BA08:072, neighbor
Bev Wortman, BA08:072, employee of owner
Michael Dambeck, BA08:073, owner
John Schmitz, BA08:069, representing the petitioner
James Hock, Garvin Lake, LLC, BA08:049, petitioner
Attorney Kathryn Sawyer Gutenkunst, BA08:049, Attorney
for the petitioner
Christopher & Kara Blake, BA08:049, neighbor
Pat Reardon, BA08:049, neighbor
Fowler McConnell BA08:049, neighbor
Audrey Paringer, BA08:049, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Dwyer *I make a motion to approve the Summary of the Meeting of November 12, 2008.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Dwyer *I make a motion to approve the Summary of the Meeting of November 25, 2008.*

The motion was seconded by Mr. Day and carried with three yes votes from Mr. Ward, Mr. Dwyer and Mr. Day. Mr. Bartholomew and Mr. Schmidt abstained because they were not present at the meeting of November 25, 2008.

NEW BUSINESS:

BA08:071 DAWN ENGEN AND RACHEL PAWLOWSKI:

Mr. Schmidt *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, except Condition No. 3 shall be modified to read as follows:*

"Two of the four accessory buildings must be removed within 90 days of the date of this decision unless approval to retain more than two (2) accessory buildings is obtained from the Town Plan Commission. The Town's approval shall be requested no later than January 9, 2009 so that they can consider the matter on their February agenda. If the Town denies the request, or if no action is taken by the Town, the buildings must be removed no later than March 8, 2009."

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the "accessory buildings without a principle residence" requirements, subject to the following conditions:

1. A Letter of Credit must be filed with the Waukesha County Planning and Zoning Division Staff, prior to the sale of the parcel containing the residence, to ensure that the accessory structures that are to remain as a result of this decision are removed within two (2) years of this decision or a new home is constructed on the remnant property, unless the deadline is extended by the Board of Adjustment, without the necessity of a new public hearing. The Letter of Credit must be for \$20,000 or an amount equal to 110% of a cost estimate from a licensed contractor for removing the accessory structures.
2. A Zoning Permit for a new residence must be obtained within two (2) years of the date of this Decision or the accessory structures that are to remain as a result of this decision must be removed within two (2) years of the date of this Decision.
3. Two of the four accessory buildings must be removed within 90 days of the date of this decision unless approval to retain more than two (2) accessory buildings is obtained from the Town Plan Commission. The Town's approval shall be requested no later than January 9, 2009 so that they can consider the matter on their February agenda. If the Town denies the request, the buildings must be removed no later than March 8, 2009.

4. The use and location of the buildings must remain in conformance with all District regulations.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approved request for a variance, with the recommended conditions, will allow the petitioner to sell one of the lots and retain the existing accessory buildings on the other lot. The Letter of Credit will ensure that a new home is constructed on the property or that the accessory structures will be removed within two years. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:072 DENNIS PUNCHES (OWNER) BEVERLY WORTMAN (APPLICANT)
WILLIAM GROSKOPF (AGENT):**

Mr. Schmidt

*I make a motion to **deny** the request for variances from the he C-1 (EFD) District requirements and **approval** of the requested variances from the road setback, floor area ratio and open space requirements, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with the following changes and additions:*

Condition No. 3 shall be revised to: "The footprint of the structure shall not exceed 1,400 sq. ft. This shall consist of a minimum 850 sq. ft. first floor and a minimum 400 sq. ft. attached garage. This will result in approximately 7,790 sq. ft. of open space on the property."

Condition No. 4 shall be revised to: "The total floor area on the property shall not exceed 2,022 sq. ft. This will result in a floor area ratio of approximately 22%."

A condition shall be added which reads: "The residence and attached garage must be located a minimum of 41 ft. from the right-of-way, as proposed."

The Board's reasons for the decision shall read: The conditional approval of this request will allow the construction of a new residence and attached garage that provides a reasonable use of the property and is appropriately sized for the lot and particular lot conditions. Variances should only be granted to provide the minimum relief necessary for a reasonable use of the property and to accommodate physical limitations that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. The entire property is 2-3 ft. below the estimated 100-year floodplain of Lower Genesee Lake and there is no conforming location on the lot for a structure to be constructed. However, it is possible to construct a smaller structure that provides

a reasonable use that is more conforming to the district requirements than the requested proposal. It is important to note that the purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. It is also important to note that the reason for the request is that the existing residence and detached garage were severely damaged in the 2008 floods, necessitating a rebuild. Allowing a larger structure to be built on this property is not reasonable given that the entire property lies well below the estimated 100-year floodplain elevation of Lower Genesee Lake. This approval, as conditioned, will result in 2,022 sq. ft. of living and storage space, which provides reasonable use of this small, non-conforming property which is located entirely within the estimated 100-year floodplain. It is important to note, also, that the Board has previously denied multiple requests to construct a larger building on this property. It should also be noted that although it is impossible to meet the open space requirement due to the lot size, the footprint has been limited while also still allowing some flexibility for the design. It is critically important to limit the footprint size of structures in the floodplain. The overall size of the structure has also been limited due to the small lot size. The road setback variance is justified as it will allow some flexibility in placing the structure relative to the floodplain and shore setback issues. In addition, the right-of-way of Douglas Dr. varies and that should be factored in. In addition, Douglas Drive is a dead end road. Therefore, the approval of this request, as conditioned, will be in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback and the C-1 (EFD) District requirements for lateral expansion into the floodplain and **approval** of the requested variances from the floor area ratio and open space requirements, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. Prior to the issuance of a Zoning Permit, the brick patio on the lakeside of the existing residence must be removed and the area restored with vegetation.
3. The footprint of the structure shall not exceed 1,300 sq. ft. This shall consist of a minimum 850 sq. ft. first floor and a minimum 400 sq. ft. attached garage. This will result in approximately 7,890 sq. ft. of open space on the property.
4. The total floor area on the property shall not exceed 1,792 sq. ft. This will result in a floor area ratio of approximately 19.5%.
5. The residence and attached garage and all other appurtenances must not exceed two stories, as viewed from the lake and the road. The proposed residence and attached garage must conform to the height requirements of the Ordinance.
6. The structure shall not have a High Flood Damage Potential (i.e. damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure and its contents).
7. The construction shall not impede drainage, obstruct flow, reduce the flood water storage capacity of the floodland or result in an increase regional flood height. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or an analysis calculating the effects of this proposal on regional flood height to ensure that the effects of the proposal are according to the standards set forth in Section 3(d)5.A. These standards state that the submitted plans and calculations must demonstrate that the proposed fill of the floodplain does not impede drainage, obstruct flows, or reduce the floodwater storage capacity of the floodland. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
8. If the flood storage capacity is proposed to be reduced, compensating storage capacity of the floodplain must provide on this property in a manner that is not deleterious to other properties or the quality of any waters. Compensatory storage is required for all areas of authorized fill on a minimum of a one to one basis, which equals 100% replacement of any lost floodplain storage capacity. Excavation below the groundwater table is not considered to provide an equal volume of storage. Compensation must be provided in a manner which is not deleterious to other property or the quality of any wetlands. The area of compensatory floodplain storage shall be in close proximity to the fill activity and shall not result in an increase in floodplain elevations on upstream or downstream properties. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin.
9. The elevation of the lowest floor of the residence and attached garage, excluding any basement or crawlspace 5 ft. or less in height, shall be placed at or above the flood protection elevation (estimated 872.0 amsl) and reconstruction may only occur on the same foundation

or newly constructed foundation which represents no greater an encroachment or extension of the previously existing structure other than vertically. Said foundation shall be floodproofed and certified as set forth herein. Basements or crawlspaces that are 5 feet or less in height must comply with Condition No. 12 below.

10. Fill shall be used to elevate the lowest floor, excluding those basements or crawlspaces, 5 ft. or less in height, so as to meet the above. The fill surrounding the structure shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. The fill shall not negatively alter floodwater conveyance or increase flood heights. Where such distance cannot be achieved because of lot lines, elevations of existing streets or sewer lines, flood impacts, or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structures shall be floodproofed to the flood protection elevation in accordance with the methods set forth herein and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin and be authorized by the WDNR. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall at a minimum provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.
11. If the residence has a basement or crawlspace which is 5 ft. in height or less and which is not useable as living area, the surface of the floor of the basement or crawlspace shall be at or above the regional flood elevation. Heating, ventilation, air conditioning, electrical and gas equipment shall be at or above the flood protection elevation. In any case, the basement or crawlspace shall be floodproofed in accordance with section 8(c) to the flood protection elevation so that floodwater cannot enter directly over the ground surface into such basement or crawlspace.
12. In addition to the lowest floor elevation and fill requirements of this ordinance, any structure must meet the floodproofing standards set forth in Section 8(c) of the Ordinance.
13. There shall be contiguous dry land access provided to the residence and attached garage. Dry land access to be considered a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above the regional flood elevation and wide enough for wheeled rescue and relief vehicles. In developments where existing street or sewer line elevations make compliance with Section 8(b)A.v. impractical, a permit may be issued where access roads are at or below the regional flood elevation, if the municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or the municipality has a natural disaster plan approved by Wisconsin Emergency Management and the WDNR.

14. All private sewage systems and private wells shall be floodproofed to the flood protection elevation pursuant to Section 8(c) of this ordinance and shall conform with the provisions of the Waukesha County Code of Ordinances and Wisconsin Administrative Codes where applicable to such facilities.
15. No change in the existing topography or drainage courses on any land will be allowed, which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
16. Upon completion, the applicant must submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that floodproofing measures meet the requirements of Section 8(c) of the Ordinance. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.
17. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions.
18. The fill area and the fill around the residence shall be in accordance with the final Grading Plan, to be approved by the Town Engineer and in accordance with the standards of FEMA Technical Bulletin No.10.
19. Upon completion of the project, an "As-Built" Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Town Engineer and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff. If that "as-built" Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the petitioners shall make whatever changes are necessary to bring the property into conformance with the approved Grading Plan. The final plans and fill and floor elevations shall be submitted to FEMA to obtain LOMR-F certification if flood insurance is to be avoided.
20. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all proposed structures (including decks, patios, and walkways) in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval. This survey must show that the "brick patio" has been removed.

21. Prior to the issuance of a Zoning Permit, the final construction plans for the residence and attached garage, in conformance with all conditions, must be submitted to Planning and Zoning Staff for review and approval.
22. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 20.
23. Floodplain Certificate of Compliance: No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a Floodplain Certificate of Compliance is issued by the Zoning Administrator. The Floodplain Certificate of Compliance shall show that the building or premises or part thereof, and the proposed use, conform to the floodplain provisions of this ordinance. If all provisions are met, the Floodplain Certificate of Compliance shall be issued within 10 ft. days after written notification that the permitted work completed. The Zoning Administrator shall issue the Floodplain Certificate of Compliance to the Town Building Inspector and a copy of the Floodplain Certificate of Compliance to the applicant.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The conditional approval of this request will allow the construction of a new residence and attached garage that provides a reasonable use of the property and is appropriately sized for the lot and particular lot conditions. Variances should only be granted to provide the minimum relief necessary for a reasonable use of the property and to accommodate physical limitations that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. The entire property is within the estimated 100-year floodplain of Lower Genesee Lake and there is no conforming location on the lot for a structure to be constructed. However, it is possible to construct a smaller structure that provides a reasonable use that is more conforming to the district requirements than the requested proposal. It is important to note that the purpose and intent of the EFD District is to provide for the continued use of improved properties that lie within the floodplain and which are otherwise considered prohibited structures and to regulate them in accordance with sound floodplain management practices. It is further the intent of these provisions to regulate and diminish the proliferation of non-conforming structures and uses in floodplain areas and to regulate said reconstruction, remodeling, conversion and repair with the overall intent of lessening the public responsibilities attendant to the continued and

expanded development of land and structures which are inherently incompatible with natural floodplains and to lessen the potential danger to life, safety, health and welfare of persons whose lands are subject to the hazards of floods. It is also important to note that the reason for the request is that the existing residence and detached garage were severely damaged in the 2008 floods, necessitating a rebuild. Allowing a larger structure to be built on this property is not reasonable given that the entire property lies well below the estimated 100-year floodplain elevation of Lower Genesee Lake. This approval, as conditioned, will result in 1,792 sq. ft. of living and storage space, which provides reasonable use of this small, non-conforming property which is located entirely within the estimated 100-year floodplain. It is important to note, also, that the Board has previously denied multiple requests to construct a larger building on this property. It should also be noted that although it is impossible to meet the open space requirement due to the lot size, the footprint has been limited to the minimum required per the district regulations for minimum first floor size. It is also critically important to limit the footprint size of structures in the floodplain. The overall size of the structure has also been limited due to the small lot size. The structure will be conforming to the floor area ratio requirement once the property is sewered. In addition, although the property cannot have a basement, that is not justification for allowing a larger structure. The inability to construct a basement is part of owning a property in the floodplain. If a particular owner requires additional storage space, then a floodplain property is not appropriate for them. It is not reasonable to allow structures to be increased in size on floodplain properties from what would normally be permitted, nor allow lateral expansion into the floodplain, due to a lack of a basement. The road setback variance is also not justified as it is not necessary in order to have a reasonable use of the property. Once the footprint is reduced, as recommended, the road setback requirement can be easily achieved. Therefore, the approval of this request, as conditioned, will be in conformance with the purpose and intent of the Ordinance.

NOTE: The property is located entirely below the estimated floodplain elevation of Lower Genesee Lake (870.0 amsl). It is important to note that the floodplain elevation for Lower Genesee Lake is unstudied at this time, however. The C-1 (EFD) District requires that the first floor of all structures must be flood proofed to the flood protection elevation (2 ft. above the floodplain). Although the floodplain is unstudied for this lake, updated FEMA mapping indicates that the floodplain elevation is approximately 868.0-870.0. In addition, survey information taken by the County after the 2008 floods 2008 indicate the flood elevation in June 2008 was 869.5, and a preliminary flood study done by Welch Hansen dated April 6, 1978 placed the flood elevation at 869.6. Therefore, the County Zoning Administrator has determined that 870.0 is a reasonable assumption.

BA08:073 MICHAEL S. DAMBECK:

Mr. Day

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried 4 to 1. Mr. Bartholomew voted against the motion.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio, open space, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit for the addition, the illegal concrete patio at the shoreline east of the stairway must be removed and replaced with vegetation.
2. Prior to the issuance of a Zoning Permit for the addition, the illegal concrete patio adjacent to the residence must be reduced in size so that it does not exceed the size as previously permitted.
3. The addition shall not exceed 140 sq. ft. in size.
4. The addition must be located a minimum of 7 ft. from the west lot line as measured to the outer edges of the walls with overhangs not to exceed two (2) ft.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures (including decks, patios, and walkways) and the staked -out location of the addition in conformance with all conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval. This survey must show that the illegal patios have been removed from the property.
6. Prior to the issuance of a Zoning Permit, the final construction plans for the addition, in conformance with all conditions, must be submitted to Planning and Zoning Staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The addition will not add any additional impervious surface to the property as the area is already a concrete walkway. The increase in the size of the house will also not be noticeable to the public as there is only a small 10 ft. area between the house and garage now. Furthermore, as recommended, the project will result in less impervious surface on the property than concurrently exists by requiring the removal of two (2) illegally constructed patios. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA08:069 JEFF AND PATTI LANGER (held in abeyance from November 12, 2008):

Mr. Dwyer

*I move to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, with the following change to Condition No. 2.*

Condition No. 2 shall be revised to read "The new garage may be no larger than 12 ft. wide and 20 ft. deep."

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a special exception from the accessory building floor area ratio requirement and for variances from the road setback, shore and floodplain setback, sideyard offset, offset between a principal building and an accessory building, accessory building height, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the replacement of the existing detached garage with a new detached garage, subject to the following conditions:

1. A "preliminary site evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
2. The new garage may be no larger than proposed, 12 ft. wide and 17 ft. deep.
3. The new garage must be at least 6.5 ft. from the south lot line and at least 33 ft. from the platted centerline of the C.T.H. "C" right-of-way, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width. However, if the new garage can be designed to be located farther from the road without resulting in major grade changes to the hillside, the petitioners are encouraged to do so. The resulting additional infringement into the shore and floodplain setback areas will be permitted.
4. Due to the steep slope on the property, the new garage may be constructed with an exposed lower level that can be utilized for storage. If necessary, the height of the garage, as measured from the lowest exposed point to the peak of the roof, may exceed 18 ft., but the height of the garage as measured from the upper-level floor to the peak of the roof shall not exceed 15 ft.
5. Since the new garage will be located less than 10 ft. from the residence, it must contain a firewall sufficient to meet the one-hour fire rating contained in the building code.
6. Prior to the issuance of a Zoning Permit, a complete set of plans for the new garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit for the detached garage, an updated Plat of Survey showing the residence and deck, as currently configured, and the location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

8. Upon completion of the foundation of the detached garage, certification shall be obtained from a registered land surveyor that the garage is located outside of the established road right-of-way of 33 ft. from the platted centerline of the C.T.H. "C" right-of-way and at least 6.5 from the south lot line. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction of the detached garage.
9. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Hardships exist due to the steep slopes and the size and configuration of the lot. Due to the size of the lot, it is impossible to conform with the floor area ratio and open space requirements. Due to the shallow lot depth, even a garage located at the edge of the established road right-of-way requires shore and floodplain setback variances. Conformance with the sideyard offset requirement would require modification of the existing retaining wall adjacent to the parking area and relocation of the stairs along the side of the garage, resulting in additional disturbance to the steep slope, which is not in the public interest. Due to the steep slope, it is necessary to construct the garage with an exposed lower level, which may require the overall height, as measured from the lowest exposed point to the peak of the roof, to exceed the maximum permitted height, for a detached accessory building, of 18 ft. The approval of the requested special exception and variances is in conformance with the previous Board of Adjustment decision and will allow the replacement of a dilapidated and unsafe garage with a new garage that is similar in size and location to the existing garage, which will minimize the amount of disturbance. Therefore, the approval of the requested special exception and variances, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA08:049 GARVIN LAKE, LLC c/o JAMES HOCK (petitioner)
represented by Attorney Kathryn Sawyer Gutenkunst
Robert Stockdale (owner), represented by Attorney Thomas Lyons

Mr. Day *I move to **reconsider** our decision of August 13, 2008, regarding the request of Garvin Lake, LLC.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Schmidt abstained because he was not present at the meeting of August 13, 2008.

Mr. Dwyer *I move to **rescind** our decision of August 13, 2008, and **approve** the requested variances and special exception for the revised proposal to re-configure the subject property into three, rather than four, lots, except for the requested offset variance to permit a building envelope on proposed Lot 2 that would permit a new residence and/or accessory building to be located as close as 10 ft to the north lot line, which is **denied**, in accordance with the Staff's recommendation as stated in the Memorandum dated December 10, 2008, for the reasons stated in the Memorandum, with Condition No 3 changed as follows:*

Condition No. 3 shall be changed to read "As required by the Waukesha County Shoreland and Floodland Protection Ordinance, a paved or gravel driveway, at least 16 ft. in width, must be provided within the Garvin Lane private right-of-way in the area where that driveway provides access to more than one residence, unless an additional variance from that provision is granted. Any portion of the driveway serving only one residence shall be required to be at least 12 ft. wide, unless an additional variance from that provision is granted."

The motion was seconded by Mr. Day and carried with four yes votes. Mr. Schmidt abstained because he was not present at the meeting of August 13, 2008.

The Planning and Zoning Division staff's recommendation was for **approval** of an offset variance to permit the north line of proposed Lot 2 to be located 8.75 ft. from the residence on proposed Lot 2, subject to the conditions listed below, but **denial** of the request for an offset variance for a building envelope on proposed Lot 2 that would permit a new residence and/or accessory building to be located as close as 10 ft. to the north lot line. The Planning and Zoning Division staff also recommended **approval** of variances from the lot size, lot width, and access easement width; **approval** of variances to permit accessory buildings to remain on a lot without a principal structure (residence); and **approval** of a special exception from the accessory building floor area ratio requirement, to permit the proposed lot re-configuration, as revised, subject to the conditions listed below.

1. A Certified Survey Map, substantially in conformance with the proposed configuration shown on Sheet 1 of a proposed Certified Survey Map received by the Waukesha County Department of Parks and Land Use on November 13, 2008, must be recorded in the Waukesha County Register of Deed's office, following review and approval of the Certified Survey Map by the Town of Merton and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff.
2. A Storm Water Management Plan must be submitted to the Land Resources Division of the Waukesha County Department of Parks and Land Use for review and approval. The Storm Water Management Plan must be approved by the Land Resources Division of the Waukesha County Department of Parks and Land Use and a Certification of Compliance issued, prior to approval of the Certified Survey Map by the Planning and Zoning Division staff.
3. As required by the Waukesha County Shoreland and Floodland Protection Ordinance, a paved or gravel driveway, at least 16 ft. in width, must be provided within the Garvin Lane private right-of-way in the area where that driveway provides access to more than one residence. Any portion of the driveway serving only one residence shall be required to be at least 12 ft. wide.
4. If it is determined by the Town of Merton that the driveway/roadway widths required above are not adequate to allow emergency vehicles to access the property, the driveway/roadway widths shall be increased to the minimum width determined by the Town of Merton to be necessary to allow emergency vehicles to access the property.
5. The Planning and Zoning Division staff must be advised by the Town of Merton that the proposed turnaround easements at the end of Garvin Lane are adequate for their emergency vehicles.
6. The north line of proposed Lot 2 may be located 8.75 ft. from the existing residence, but any new buildings constructed on Lot 2 must conform with the minimum offset requirement of 20 ft. from the north lot line. The building envelope on the proposed Certified Survey Map shall be revised in accordance with this condition.
7. The existing detached garage on proposed Lot 1 and the existing shed on proposed Lot 3 shall be removed from those lots, no later than two (2) years after the date of recordation of the Certified Survey Map, unless residences have been constructed, or are in the process of being constructed, on those respective lots. This condition shall be noted on the Certified Survey Map.
8. The maximum permitted floor area ratio on the three re-configured lots shall not exceed 15%. This condition shall be noted on the Certified Survey Map.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where

compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances, with the exception of the requested offset variance for a building envelope for a new residence on proposed Lot 2, would prohibit any re-configuration of the existing lots, which would be unnecessarily burdensome. While the proposed lots do not meet the minimum lot size and lot width requirements for lots on a private road, they are larger and wider than most of the existing lots on Okauchee Lake. Further, granting the variances and special exception necessary to re-configure the existing seven (7) plus lots of record into three (3) lots is in the public interest because it would eliminate the possibility that the existing extremely substandard lots of record could be sold separately and multiple parties could request variances to permit them to be developed separately.

The revised proposal will eliminate the need for shore and floodplain setback variances on any of the proposed lots, which is in the public interest. Although it is still felt that it is appropriate to allow the proposed lot re-configuration to maintain the offset of the existing residence from the north lot line of proposed Lot 2, it is also felt that the building envelope for a new residence and/or accessory building on proposed Lot 2 should be located in conformance with the minimum offset requirement of 20 ft., since an adequate building envelope now exists on that lot without an offset variance. Therefore, the approval of the requested offset variance for a building envelope on proposed Lot 2 would not be in conformance with the purpose and intent of the Ordinance. Approval of the other requested special exceptions and variances required by the revised proposal, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA07:016 JAMES AND JOYCE HUNZINGER:

*Only the Town of Merton Board of Adjustment was required to act on this item, as the Waukesha County Board of Adjustment acted on this request on November 12, 2008.

ADJOURNMENT:

Mr. Dwyer

I make a motion to adjourn this meeting at 8:55 p.m.

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Sheri Mount
Secretary, Board of Adjustment